MEMORANDUM

April 17, 2020

TO: Mayor John P. Kahl and Members of City Council

FROM: Teresa Durm (Human Resources Director) and
Scott A. Brunton (City Attorney's Office)

SUBJECT: Ordinance Revising and Updating the Personnel Policy Manual

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DISCUSSION:

This Ordinance consists of revisions and updates to the City's Personnel Policy Manual. The Personnel Policy Manual is reviewed on an annual basis to ensure that it correctly and properly sets forth the City's personnel policies and addresses any legislative updates in the past year at the State or Federal levels.

In 2019, the State of Illinois passed into law and amended the Cannabis Regulation and Tax Act, which legalized possession of recreational amounts of cannabis (marijuana), while also amending the Compassionate Use of Medical Cannabis Program Act and adopting other related legislative actions that impact employment conduct. Pursuant to these legislative changes, a review and update of the City's substance abuse policy in the Personnel Policy Manual became necessary. Moreover, under this legislation, the City needs to ensure that its substance abuse policy and drug free workplace policy are reasonable in scope and consistent with these new laws. Accordingly, this Ordinance makes these necessary updates and changes to the City's substance abuse policy.

Additionally, updates have being made to the Personnel Policy Manual by this Ordinance include the following items: (1) inserting the Mayor in various provisions of the Manual to act in the absence of having a City Administrator; (2) revising the pre-employment testing provision to be consistent with the updated substance abuse policy; and (3) updating the sections dealing with sick leave, use of vacation leave upon returning from military duty, use of City vehicles, and employee attendance.

In order to effectuate these proposed changes in the City's Personal Policy Manual, this Ordinance should be adopted in conjunction with Council approval and adoption of the Annual Salary Resolution.

RECOMMENDATION:

The Council should pass this Ordinance in conjunction with Council action to adopt the Annual Salary Resolution for the 2020-2021 fiscal year.

ORDINANCE NO. 4497

AN ORDINANCE AMENDING THE CITY OF EAST PEORIA PERSONNEL POLICY MANUAL

WHEREAS, the City of East Peoria established its Personnel Policy Manual by Ordinance No. 2474 in November 1990, which has been subsequently amended and updated by various ordinances including a significant revision and re-issuance in July 2014 by Ordinance No. 4173; and

WHEREAS, in the past year, the State of Illinois has passed into law and amended the Cannabis Regulation and Tax Act, which legalizes possession of recreational amounts of cannabis (marijuana), while also amending the Compassionate Use of Medical Cannabis Program Act and adopting other related legislative actions, and thereby has changed the landscape in Illinois in relation to the legal possession of that cannabis; and

WHEREAS, the City Council now seeks to revise and update the substance abuse policy in the Personnel Policy Manual to ensure the implementation of a reasonable drug-free workplace policy that is applied in a non-discriminatory manner for all employees, while also not establishing unreasonable or unnecessary limits on employee use of legal substances while off duty and not on-call unless the employee holds a safety sensitive position with the City; and

WHEREAS, the City Council recognizes its obligation and responsibility to implement a reasonable drug free workplace policy that ensures the safety of employees and the public at large, while also protecting the rights of employees under the conflicting laws that exist regarding use of medicinal and recreational cannabis; and

WHEREAS, the City Council hereby finds that for employees holding safety sensitive positions – which includes police officers, firefighters, paramedics, any employee who operates heavy or large vehicles or mobile equipment, and any employee who drives a commercial motor vehicle – it is reasonable and necessary to implement a reasonable drug free workplace policy in a manner that limits off-duty use of certain legal substances and any illegal substances because such off-duty use could put other employees and members of the public at great risk to incur human loss or injury while these safety sensitive employees are at work before any signs of impairments are detectable or noticeable by supervisors or others; and

WHEREAS, the City Council also finds that establishing and implementing a reasonable drug free workplace policy under the substance abuse policy in the Personnel Policy Manual is in the best interests of the City and its employees; and

WHEREAS, the City Council further finds that other additional revisions, updates, and clarifications to the Personnel Policy Manual are necessary and are in the best interests of the City and its employees; and

WHEREAS, by making each of these revisions, updates, and clarifications to the Personnel Policy Manual as set forth below in this Ordinance, the City Council is not taking any action intended to create any contractual rights for any City employee or to change employee rights that are governed by a bargaining agreement for any employee group; and

WHEREAS, the City Council finds that the adoption of these revisions to the Personnel Policy Manual shall be made in conjunction with and in consideration of the City's Annual Salary Resolution, which is also being adopted at this same time;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The following sections of the City's Personnel Policy Manual are hereby amended or added as follows (additions are indicated by underline; deletions by ~~strikeout~~):

> **Section 2.5 – Post-Offer Physical Examinations**. To insure each individual is capable of performing the essential functions of their position, with or without reasonable accommodation, a post-offer physical examination, performed by a physician selected by the City at City expense, may be required after the applicant has received a contingent offer of employment or promotion. The physical examination procedure shall, as its initial step, incorporate a drug screening test under standards and testing procedures designed to insure accuracy of the test result, which shall be utilized to determine whether the person is presently using any illegal, non-prescriptive drugs or other controlled substances (including cannabis), or abusing or mis-using prescriptive drugs. Persons testing positive will not be considered further for employment by the City at that time. A test for cannabis will be considered positive when meeting the definition of a "positive cannabis test" as set forth in Section 2.6. The person will be given notice of this condition at the time the person applies for a position with the City, and will complete any consent forms necessary to authorize such testing as part of the application process. If an applicant has been previously employed by the City within the year prior to the applicant submitting a new application for employment with the City, the drug screening test may be waived at the discretion of the Department Head or Commissioner overseeing the applicant's prospective re-employment with the City. If a person who is denied employment with the City because of a positive cannabis test, the person may not apply and shall not be considered for another position with the City for a period of six months after the positive cannabis test. If a person provides a diluted sample for a drug

test sample under this Section, the person will be responsible for all costs for a re-test, and each person shall only be given the opportunity to submit one re-test during that application process.

During employment by the City, every employee may be required to have a physical examination, performed by a physician selected by the City at City expense, whenever the Department Head or Commissioner has reason to question the employee's ability to perform the essential functions of the position. In addition, physical examinations performed by a physician selected by the City at City expense may be required when any employee reports any injury or illness relating to work and resulting in any lost work time, and when any employee has been off work for any reason for a period of thirty (30) days or more, before the employee will be allowed to return to active duty. Further, employees off duty by reason of illness or injury shall, as a condition for continuance of their employee status, be required to comply with physician instructions and programs to restore them to proper condition, and make every effort to rehabilitate themselves in order to return to duty at the earliest practical date.

Physical examinations, whether post-offer or during employment, shall not include testing for genetic information. An individual's genetic information shall not be used by the City during the application review process to determine an individual's qualification for City employment and shall not be used in any manner or circumstance when evaluating or reviewing a City employee.

Section 2.6 – Substance Abuse Policy. The City has the authority to implement a reasonable drug-free workplace policy that is applied in a non-discriminatory manner provided that the City does not unreasonably or unnecessarily prohibit or limit the use of legal substances while an employee is off duty and not on-call unless the employee holds a safety sensitive position. Furthermore, the City is aware of the City's obligations and responsibilities to implement a reasonable drug free workplace policy to ensure the safety of employees and the public at large, while protecting the rights of employees under the conflicting laws that exist regarding use of medicinal and recreational cannabis.

Accordingly, the ~~The~~ City is committed to establishing and implementing a reasonable policy designed to promote safety in its operations and to insure a safe and efficient work environment free from the abuse of illegal drugs, intoxicants, and other controlled substances, cannabis, or alcohol. Being under the influence of drugs, intoxicants, or other controlled substances, cannabis, or alcohol on the job presents serious health and safety risks, not only for the employee/abuser, but for co-workers and other individuals and members of the public who may be working with or in proximity to the employee. Also, alcohol and drug abuse leads to increased accidents and medical claims incurred by the employee/abuser. Furthermore, for employees holding safety sensitive positions, the City has determined that it is reasonable to implement and

apply this drug free workplace policy in a manner that prohibits or limits off-duty use of certain legal substances and any illegal substances because such off-duty use could cause great human loss or injury while the employee is at work before any signs of impairments are detectable or noticeable by supervisors or others.

Moreover, in ~~In~~ addition to the possible criminal nature of the conduct, employee involvement in drugs and/or alcohol can also adversely affect job performance and morale, and undermine public confidence in the efficiency of the City's administration and operations. Department Heads are responsible for executing the City's Substance Abuse Policy. The City**,** with the development and implementation of this policy, is making a good faith effort to maintain a reasonable drug/alcohol-free workplace policy for all City employees. No part of this policy, or any of the procedures established pursuant to this policy, guarantees employment, continued employment, or terms or conditions of employment or limits in any way the City's rights to manage its workplace or discipline employees.

This policy applies to all City employees and volunteers, as well as candidates for employment with the City who have been given conditional offers of employment. Such persons are responsible to be familiar with and comply with this policy. The provisions of this policy are subject to any federal, state, or local laws that may prohibit or restrict their applicability, and testing for substances shall be conducted and in accordance with and limited by such laws, notwithstanding any terms of this policy to the contrary.

(a) Assistance Programs. The City encourages employees to recognize that they have or may have a problem with the abuse of alcohol, drugs, intoxicants, or other controlled substances, marriage and family issues, stress and related disorders, depression, grief and loss, abuse recovery, divorce mediation, career counseling, child and adolescent behavior concerns, gambling and financial concerns, or other related concerns, and the City further encourages employees to obtain professional assistance before a problem affects an employee's work performance.

Some types of counseling or professional assistance may be covered under the City's group health care plan. An employee should review the group health insurance plan document or consult the Human Resources Coordinator in order to determine whether, and to what extent, coverage is provided by the City's group health insurance plan for the services and which organization may be a preferred provider ("PPO") under the City's group health insurance plan.

Voluntary requests for assistance will be treated confidentially, and will not result in the imposition of any discipline. However, violations of the City's policy prohibiting alcohol, drugs, and other controlled substances on the job as provided herein will not be excused or condoned because the employee has previously sought assistance voluntarily.

NOTE: For employees who have tested positive pursuant to a test administered under this policy, including a positive cannabis test, the employee will need to be evaluated by a Substance Abuse Professional

(SAP) who meets FMCSA requirements if the employer holds a CDL and drives a commercial motor vehicle or operates heavy or large vehicles or mobile equipment. This provision may also apply to other employees in safety sensitive positions. In this situation, the employee must consult with the City's Designated Employer Representative to determine whether an assistance provider is a qualified SAP.

(b) **Definitions**. For purposes of this policy, the following terms shall have the following meanings:

(1) "City Premises" shall include all work sites, work areas, property owned or leased by the City or vehicles owned, operated, leased, or under the control of the City. Privately-owned vehicles parked or operated on property owned, leased or managed by the City while an employee is on City time is also included under this definition of City premises. City premises shall not include any property owned, leased or managed by the City when an employee is on such property and the employee is not on City time.

(2) "City Time" shall include all times during which an employee is on City premises during work hours or otherwise on City premises for work purposes, for the benefit of the City, or as a representative of the City, and shall also include (i) meal and break times on or off City premises taken during the employee's regular work hours, and (ii) time performing work off City premises for the benefit of the City as a representative of the City. With regard to possession and consumption of alcoholic beverages, City time shall not include "after hours" community events attended by an employee that occur outside an employee's regular work hours, meals that occur before or after an employee's regular work hours, or meals or events after an employee-attended conference or seminar.

(3) "Legal Drug" means any substance the possession or sale of which is not prohibited by law, including prescription drugs that have been prescribed for the employee, ~~and~~ over-the-counter drugs, and cannabis as provided under the CRTA or MCPA.

(4) "Illegal Drug" means any controlled substance the possession or sale of which is prohibited by law.

(5) "Under the Influence" means the condition wherein any of the body's sensory, cognitive, or motor functions or capabilities is altered, impaired, diminished, or affected due to substances. With the exception for medicinal cannabis taken in compliance with the MCPA, this ~~This~~ also means the detectable presence of substance(s) within the body, regardless of when or where the substance or substances may have been consumed, having an alcohol concentration within the violation range specified by the laws of the State of Illinois, having an amount of cannabis / tetrahydrocannabinol (THC) within the range specified to be a positive cannabis test as defined herein, and/or having a positive test for any other substance(s). With respect to employees subject to the

Federal Motor Carrier Safety Administration (FMCSA) regulations, U.S. Department of Transportation (DOT) regulations, or performing safety-sensitive functions including employees who drive commercial motor vehicles, operate heavy or large mobile equipment, police officers, firefighters, under the influence is defined in accordance with FMCSA regulations as having an alcohol concentration of 0.04 or greater.

(6) "Substance" means any alcohol, cannabis, drugs, intoxicant, or other substances (whether ingested, inhaled, injected subcutaneously, or otherwise) that have known mind altering or function-altering effects upon the human body or that impair one's ability to safely perform work, specifically including, but not limited to, prescription drugs and over-the-counter medications; alcohol; cannabis; drugs and other substances made illegal under federal or state law; "synthetic or designer" drugs; illegal inhalants; "look-alike" drugs; amphetamines; cannabinoids (marijuana and hashish); cocaine; phencyclinidine (PCP); and opiates; and any drugs or other substances referenced in Schedule I through V of 21 C.F.R. Part 1308 (whether or not such drugs or other substances are narcotics).

(7) "Traceable" (in the employee's system) ~~Employee's System"~~ means that the results of a laboratory's analysis of the employee's urine or blood specimen are positive for the tested substance or for cannabis, results in a positive cannabis test.

(8) "Reasonable Suspicion" of impairment means that the City's representatives have observed and can describe or articulate specific symptoms of an employee while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, breath, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, excessive unexcused absences or tardiness, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others, or detection of a prohibited substance in the area where an employee has been working. A registered qualifying user of medical cannabis under the MCPA ~~Compassionate Use of Medical Cannabis Pilot Program Act~~ must first be given a reasonable opportunity to contest the basis of the suspected impairment before being subject to discipline based on a reasonable suspicion of impairment. A permitted user (being an employee not holding a Safety Sensitive Position) of cannabis under the CRTA must first be given a reasonable opportunity to contest the basis of the suspected impairment before being subject to discipline based on the employer's good faith belief of impairment.

(9) "Safety Sensitive Position" includes any job function fraught with the risk of injury to others such that even a momentary lapse of attention can have disastrous consequences, as well as any function described as safety sensitive by FMCSA or other applicable regulations, including any employee working as a police officer, firefighter, paramedic, or ~~telecommunication dispatcher,~~ any employee who operates heavy or large vehicles or mobile equipment, any employee who drives a commercial motor vehicle, or any employee who works with chemicals in the City's laboratories in the City's water or waste water departments.

(10) "Work Related Cause" or "Work Related" means the employee has incurred a work-related injury requiring medical attention at a medical facility; caused the injury of another person on City premises or during City time; caused damage to any City owned or leased property; or commits repeated and/or flagrant violations of safety standards.

(11) "CRTA" means the Cannabis Regulation and Tax Act, as amended from time to time, that decriminalized the use of recreational marijuana by adults age 21 and older effective on January 1, 2020. The CRTA incorporates provisions of the State's medical marijuana law and specifically provides that nothing in the CRTA shall be construed to enhance or diminish protections afforded by any other law, including but not limited to the Medical Cannabis Act.

(12) "MCPA" means the Compassionate Use of Medical Cannabis Program Act, as amended from time to time; initially enacted on January 1, 2014, as the Compassionate Use of Medical Cannabis Pilot Program Act, this Act was amended on August 9, 2019, to make the law permanent; the MCPA establishes a patient registry program for use of medical marijuana by registered qualifying patients for certain qualifying medical conditions.

(13) "On-call" means for purposes of the CRTA, when an employee is scheduled with at least 24 hours' notice to be on standby or otherwise responsible for performing tasks related to the employee's employment on City premises.

(14) "Positive cannabis test" means any amount of cannabis / tetrahydrocannabinol (THC) in the test sample for any employee holding or seeking a Safety Sensitive Position, and for any employee not holding or seeking a Safety Sensitive Position, a "positive cannabis test" means having cannabis / tetrahydrocannabinol (THC) in the test sample in an amount that exceeds the legal limits established under the Illinois Vehicle Code, as amended from time to time (currently set at 5 or more nanograms of THC per milliliter of whole blood, or 10 or more nanograms of THC per milliliter of any other bodily substance that includes urine or saliva).

(c) **Prohibition**. The possession, use, manufacture, sale, delivery, transfer, or distribution of alcohol, cannabis, illegal drugs, or other intoxicants or controlled substances while on City premises, ~~or~~ while on City time, or while driving a vehicle owned, operated, rented, or leased by the City, or under the control of the City is prohibited and constitutes employee misconduct sufficient to warrant termination of the employment relationship. In addition, employees may not report to work or be on City premises or City time under the influence of alcohol or cannabis or with any traceable illegal drug or substance in their system. The prohibition in this subpart (c) includes cannabis used for medical purpose in accordance with the MCPA. Further, an employee in a safety sensitive position shall not consume alcohol or cannabis during the four (4) hour period prior to reporting to work. Moreover, an employee in a safety sensitive position shall not consume alcohol or cannabis within the eight (8) hour period after being involved in an accident that occurs while working for the City or until the employee has been tested for alcohol or drugs as provided herein, whichever occurs sooner. Any violation of this policy may result in immediate discharge of the employee and may subject an employee to legal action.

Any employee convicted of any criminal offense involving alcohol, cannabis, or illegal drugs or other controlled substance in connection with or related to their employment with the City in any manner shall be required to notify their Department Head in writing of such conviction within five (5) days of the conviction. Failure to provide such notice will result in termination.

Furthermore, the City does not condone the abuse of legal drugs or working under the influence of legal drugs to the extent that job performance or safety is adversely affected. Employees using prescription medications or over-the-counter drugs, including medicinal cannabis in compliance with the MCPA, are responsible for being aware of any potential effect such drugs may have on the employee's judgment or ability to perform the employee's duties. Employees taking lawful prescriptive medications while on duty or working under their influence must maintain the substance in its original container, identifying the drug, dosage, date of prescription, and prescribing physician. Further, any City employee who works in a Safety Sensitive Position and who takes prescription medications while on duty or works under their influence may constitute a direct threat to safety of the employee, co-workers, and the public, as such use of prescription medication could adversely affect the employee's ability to safely perform the employee's job duties. Therefore, these employees employed in a safety sensitive position must provide their Department Head with a statement from the physician indicating the employee is able to work while taking such medication, and listing any precautions or safety restrictions that may be advisable for the safety of the employee, co-workers, or the public.

(d) **Compliance**. To insure employees are complying with the prohibitions of this policy, the City administration or designee may inspect

any City owned or maintained property, including other equipment assigned to employees for their use as employees. Further, upon reasonable suspicion, the City administration or designee may conduct searches of any employee property brought or kept on City premises, including personal effects, vehicles, desks, lockers, and rooms for drugs, substances, or alcohol and related paraphernalia and for dangerous weapons, which may also include the search of property of other employees.

The City administration may require any employee to complete blood, urine, or other diagnostic or testing procedures to detect the presence of alcohol, cannabis, drugs, or other intoxicants or controlled substances within the employee's system whenever the employee is involved in any on-the-job, work related accident including a traffic accident, reports any work related injury or illness related to employment and resulting in lost work time, or where reasonable suspicion exists to question whether the employee may have used, may be under the influence of, or may be impaired by alcohol, cannabis, or any drug or other intoxicant or controlled substance while on City premises or while on City time. If the City has reasonable cause to believe an employee has caused an on-the-job, work related injury that is considered recordable under OSHA guidelines (i.e. requiring medical treatment) as a result of being under the influence, the supervisor or department head may require the injured employee to undergo a post-accident substance test. The employee will also be required to undergo post-accident testing if required by FMCSA, DOT, or other applicable regulation.

For purposes of this policy, an employee shall be deemed to have used, or be under the influence of, or be impaired by alcohol where any test demonstrates a blood/alcohol concentration within the employee's system of or equivalent to .05 percent or more, by cannabis if the employee has a positive cannabis test (unless the employee is a qualifying patient under the MCPA), and by other drugs, intoxicants, or other controlled substance whenever any testing confirms the employee has detectable levels of a drug, intoxicant, or other controlled substance or its components within the employee's system for which the employee has not produced a valid and proper prescription. However, for an employee holding a Safety Sensitive Position, such employee shall be deemed to have used, or be under the influence of, or be impaired by alcohol where any test demonstrates a blood/alcohol concentration within the employee's system of or equivalent to .04 percent or more, as well as by cannabis, drugs, intoxicants, or other controlled substance whenever any testing confirms the employee has detectable levels of a cannabis, drug, intoxicant, or other controlled substance or its components within the employee's system for which the employee has not produced a valid and proper prescription.

Additionally, if an employee who drives a commercial motor vehicle for the City has a verified blood alcohol concentration level of .02 or greater but less than .04, the employee will be removed from the employee’s safety sensitive work functions for a period of 24 hours. Any employee removed

from safety sensitive work functions pursuant to this provision shall not be subject to discipline by the City for having a verified blood alcohol concentration level in the range of .02 or greater but less than .04.

Employees shall be required upon request to complete any necessary forms to authorize testing pursuant to this policy and to cooperate in obtaining a satisfactory test result. Any failure or refusal to cooperate fully in such testing, or to sign any necessary authorization for such tests, where the employee has been requested to complete testing pursuant to this policy, will be deemed insubordination, and may result in employment termination.

Employees who, upon testing, are determined to have used, have been under the influence of, or have been impaired by alcohol, cannabis, or any other drugs or other intoxicants or controlled substances, may, where it is the first occurrence, request the opportunity to enter and complete a recognized drug/alcohol rehabilitation program. Successful completion of a rehabilitation program and enrollment and active participation in an approved after-care program will be considered in decisions whether a violation of this policy warrants termination of employment, provided it is the employee's first occurrence and the employee agrees to repeat testing to demonstrate his/her continued adherence to this policy upon resumption of employment (repeat testing as provided herein may include random drug testing for a period of up to twelve (12) months). However, even if it is a first offense, the City shall have the sole discretion to determine the appropriate course of action when an employee tests positive for using, having been under the influence of, or having been impaired by alcohol, cannabis, drugs, intoxicants, or controlled substances, which includes the determination of the appropriate level of discipline up to and including termination and the determination whether to allow an employee to enter a rehabilitation program with follow-up testing. The employee may be required to periodically provide proof that he/she is participating in the rehabilitation or after-care program. Employees who have successfully completed a substance abuse or rehabilitation program may be required to submit to a fitness-for-duty substance test before being permitted to return to work. Any employee who returns to work after completion of a rehabilitation program and who subsequently violates the substance abuse policy may be immediately discharged without regard to a request for further rehabilitation.

To insure the accuracy of any substance abuse testing, the City administration shall establish testing procedures designed to insure the accuracy of test results to the extent possible and fiscally appropriate. The employee will be provided a copy of the specimen collection procedures. The City's procedures shall provide for the splitting of the initial specimen or sample, such that the remaining (untested) portion of the split specimen or sample is retained for a reasonable period of time for verification testing if needed. If testing of the specimen or sample provides a positive result, the employee may – within 72 hours of receiving the positive test results –

request that the remaining portion of the split specimen or sample be tested, which shall be completed at the City's expense. The employee shall have no right to submit another specimen or sample for testing; only the split specimen or sample may be tested when a verification test is requested by an employee. If the employee does not make the request to have the split sample verification tested within 72 hours of receiving the positive test results, the employee will have waived the right for a verification test of the split specimen or sample unless the employee presents documentation that serious injury or illness, lack of actual notice of the verified test result, inability to contact the City administration or Department Head or the medical officer for the testing facility, or other circumstance unavoidably prevented the employee from making a timely request. If the end of the 72-hour period falls on non-working day (such as a weekend or holiday) or after regular working hours for the employee's department, the employee shall have until noon the next regular work day to make this request for a verification test.

When an employee is subjected to testing as provided in this policy, the employee's right to privacy will be respected, and the results of any testing shall be kept strictly confidential by the City to the extent required and permitted by law. However, the City may use the results to decide upon an action to be taken towards an employee, or to the extent necessary, to defend City actions in any subsequent grievance, arbitration, or legal or other proceeding.

(e) **Suspension From Duty**. Where reasonable suspicion exists to suspect an employee may be under the influence of or impaired by any alcohol, cannabis, other drugs, or other intoxicant or controlled substance, the employee shall be suspended from duty until it can be established whether the employee is so impaired. Additionally, at the discretion of the City administration, employees suspected of violating this policy may be placed on administrative leave without pay pending test results. If the test results are negative; the employee will be reimbursed for any salary lost during the period of administrative leave.

Further, the employee will be removed from the work area and provided with transportation to the place of testing. In such circumstances, appropriate provision should be made for the employee's transportation home to prevent the employee from driving.

(f) **Disciplinary Action**.

(1) Any employee who possesses, sells, purchases, uses, distributes, delivers or transfers alcohol, cannabis, or an illegal substance on City premises on City time will be removed from the work area, and may be subject to immediate discharge.

(2) Any employee who reports to work under the influence of alcohol or cannabis, or with an illegal drug or substance traceable in the employee's system, will be removed from the work area, and may be subject to immediate disciplinary action up to and including discharge.

(3) An employee who refuses to submit to testing when required under this policy will be removed from the work area, and may be subject to immediate disciplinary action up to and including discharge. Refusal to submit to testing shall include, but may not be limited to the following: (1) failure to appear for any test within a reasonable amount of time, after being directed to do so by City, consistent with this policy, applicable regulations, including but not limited to FMCSA or DOT regulations, or both; (2) failure to remain at the testing site until testing is complete; (3) failure to provide a sufficient breath, saliva, blood or urine specimen for any drug, cannabis, or alcohol test required by this policy or applicable FMCSA or DOT regulation; (4) in the case of directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of the provision of a specimen; (5) failure to provide a sufficient amount of saliva, breath, blood or urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure; (6) failing or declining to take a second test that City or the collector has directed the employee to take; (7) failure to undergo a medical examination or evaluation as directed by the medical review officer overseeing the collection of the specimen as part of the verification process or as directed by the Designated Employer Representative; (8) failure to cooperate with any part of the testing process; or (9) having a verified adulterated or substituted test result as reported by the medical review officer overseeing the collection of the specimen.

(4) Any employee who is offered the opportunity to participate in rehabilitation or treatment program as a condition of continued employment with the City, as such program is recommended as a result of a positive test and evaluation by a substance abuse professional, but who refuses to participate in or complete the program, will not be allowed to perform work for the City and may be subject to disciplinary action up to and including discharge.

(g) Random Testing. The City is a drug-free workplace and reserves the right to conduct random testing on employees in Safety Sensitive Positions. Where random testing is prohibited or restricted by applicable federal, state or local statute or regulation, or other legally-binding agreement, the City ~~of~~ will conform to all applicable laws, regulations, and agreements notwithstanding the provisions of this policy. Furthermore, employees engaged in jobs requiring a commercial driver's license ("CDL") who drive or operate commercial motor vehicles in conjunction with the employee's job duties are subject to federal drug and alcohol testing procedures mandated by the U.S. Department of Transportation, which may include random alcohol or drug testing.

(h) Pre-Employment Substance Testing. This policy applies to all candidates for employment with the City who have been given contingent

offers of employment. Upon receipt of a contingent offer of employment, candidates for any City position may be subject to pre-employment drug testing. Individuals to whom a contingent offer is made whose pre-employment drug test returns positive (except with respect to legally prescribed drugs and over-the-counter medications) will be ineligible for employment. For cannabis, testing positive means having a positive cannabis test as defined in this Section. Candidates who test positive will have their contingent offer of employment revoked.

(i) Designated Employer Representative. The City's "designated employer representatives" (DER) for this Substance Abuse Policy set forth in this Section 2.6, as well as any additional or supplemental administrative substance abuse policies, shall be the following persons:

For all City employees:
Teresa Durm
Human Resources Coordinator
401 W. Washington Street (City Hall)
East Peoria, Illinois 61611
(309) 427-7606

For Public Works employees:
Jennifer Leach
Administrative Assistant
401 W. Washington Street (City Hall)
~~2232 E. Washington Street (Public Works Building)~~
East Peoria, Illinois 61611
(309) 427-7650

The DER can answer any questions about the City's Substance Abuse Policy and any additional or supplemental administrative substance abuse policies, including testing procedures, post-testing procedures, and employee rights under these policies. The DER will receive verified test results for tests conducted pursuant to this Substance Abuse Policy. The DER, or the DER's designee, will provide a copy of test results to the employee within a reasonable time after receipt of the test results.

(j) Medical Marijuana Policy. The City will not penalize an employee or job applicant solely for being a registered qualifying patient or registered designated caregiver under the MCPA~~Compassionate Use of Medical Cannabis Pilot Program Act~~, which includes such person having a positive cannabis test if a qualifying patient, unless failing to do so would put the City in violation of federal law or unless failing to do so would cause the City to lose a monetary or licensing-related benefit under federal law or rules. Thus, individuals who are registered users of medical cannabis in accordance with the MCPA ~~Compassionate Use of Medical Cannabis Pilot Program Act~~ will not be disqualified from employment based solely on the detected presence of cannabis on a drug test (having a "positive cannabis

test”), unless failing to do so would put City of East Peoria in violation of a federal law or cause the City to lose a federal contract or funding. Individuals who are registered users of medical cannabis in accordance with the MCPA ~~Compassionate Use of Medical Cannabis Pilot Program Act~~ may not report to work under the influence of cannabis. Further, the City prohibits the use and storage of medical cannabis on its property, at all workplaces, and in any employer-owned vehicles.

Section 3.3 – Sick Leave. To provide for a continuation of income in circumstances where an employee is legitimately absent from work due to an off-the-job illness or injury, the City Council has adopted a policy to provide paid sick leave. An employee eligible for sick leave with pay under this policy shall be granted such leave where the employee is required to be absent when scheduled to work due to (1) personal illness or physical incapacity resulting from causes beyond the employee's control and unrelated to employment, which includes incapacity due to gender transition or other elective medical, vision, or dental procedure; (2) grave illness of a member of the employee's immediate family who requires the employee's personal care and attention; or (3) enforced quarantine of the employee pursuant to community health regulation or City directive. Immediate family members shall be limited to the employee's lawful spouse, civil union partner, children, parent or parent-in-law, step-parent, grandparent, grandchild, or brother or sister. Immediate family members shall also include other relatives by blood, marriage, or civil union who reside with the employee. Where both an employee and his or her spouse or civil union partner could attend to another family member, sick leave benefits will be paid only where the employee is able to demonstrate to the satisfaction of the Department Head that circumstances preclude the employee's spouse or civil union partner from remaining at home while the employee is scheduled for work.

Any employee off work and requesting to utilize sick leave benefits must inform his or her immediate supervisor of the absence and the reason for it as soon as possible. Failure to provide prompt and proper notice may cause a denial of the request to utilize sick leave benefits for the period of absence. A certificate from a physician stating the employee was incapacitated and unable to perform his or her duties, and the reasons for such medical conclusion, shall be required where sick leave with pay is requested for any absence of three (3) duty days or more (or two (2) duty days for employees working a twenty-four (24) hour day), or in any other circumstance where the employee's supervisor requires such certificate to confirm the employee's need to be absent. Employees who engage in any employment or inconsistent activity while claiming sick leave with pay under this policy, and employees found to have abused the sick leave benefits, will be subject to discipline. Employees shall be subject to any other administrative policy concerning sick leave which may be adopted by the City Council or promulgated by Department Heads.

Although an employee receives paid sick leave benefits under this policy, the employee is nonetheless absent from work when scheduled. The receipt of paid sick leave benefits shall not excuse the absence or preclude its consideration in assessing whether the employee is maintaining an acceptable level of attendance.

(a) **Sick Leave Benefits**. Each full-time employee (except management level employees) shall be eligible for paid sick leave of ten (10) duty days per year, earned at the rate of 6-2/3 hours per month. Those employees with less than one year of service will receive a pro-rated sick leave of 6-2/3 hours per month of service. No sick leave shall be earned during any month in which the employee is absent more than fifty percent (50%) of the work days scheduled, excluding any vacation or personal days used.

Unused sick leave shall accumulate from calendar year to calendar year according to the following schedule:

YEARS OF SERVICE	MAXIMUM ACCUMULATIONS
1 year but less than 5 years	25 duty days
5 years but less than 7 years	35 duty days
7 years but less than 10 years	40 duty days
10 years or more	100 duty days

Benefits for Department Heads will be as specified by the City Council. Department Heads shall include only the following positions: Police Chief; Fire Chief; City Administrator; City Clerk; City Treasurer; Director of Public Works; Director of Planning and Community Development; and Director of Tourism, Special Events, and Facilities.

For any employee hired on or after May 1, 2008, upon retirement, the employee may, at his option, use his accumulated sick leave time up to a maximum of four hundred eighty (480) hours (60 duty days) to retire early or work until retirement date and receive payment upon retirement for any unused accumulated sick leave up to a maximum of four hundred eighty (480) hours. At the City's discretion, such payment for accumulated sick leave may be made in one payment at retirement or over three annual payments with the first payment being made at retirement. For an employee hired on or before April 30, 2008, and who had accumulated more than four hundred eighty (480) hours of unused sick leave as of April 30, 2008, the employee shall also receive payment upon retirement for such accumulated sick leave time in excess of four hundred eighty (480) hours at retirement not to exceed the total number of unused accumulated sick leave hours the employee had as of April 30, 2008, or a total of nine hundred sixty (960) hours, whichever is less.

Alternatively, the following employees – who hold non-union supervisory positions over union employees – shall receive payment upon retirement for unused accumulated sick leave hours in accordance with the

collective bargaining agreement in effect upon the employee's retirement date for the employee union over which the employee supervises:

- Assistant Fire Chiefs, Deputy Fire Chiefs, and the Fire Chief (the Fire Chief shall be limited to a maximum of nine hundred sixty (960) hours under this provision);

- Police Chief, Deputy Police Chiefs, and Sergeants; and

- ~~Telecommunications Manager; and~~

- Public Works Department Head and Public Works Superintendents.

An employee may be eligible to receive service credit toward retirement under IMRF for any unused sick leave for which the employee does not receive any compensation or payment from the City. The employee should contact IMRF to determine whether the employee may be eligible to receive service credit for unused sick leave for which the employee will not receive any compensation or payment from the City.

The term "retirement" as used in this section shall have the definition as set forth in Section 3.2 of this Manual. The term "retirement" as used in this section does not include an employee who receives a disability pension under IMRF or other approved pension plan applicable to a particular employee's position with the City. Otherwise, except as expressly provided in this Subsection 3.3(a), any days accumulated in excess of 60 duty days are to be used for extended illness only and cannot be reimbursed. Where any employee fails to provide proper advance notice of his or her intent to retire in accordance with these policies, the employee's available benefit shall be reduced pro-rata to take into account the lack of notice. Upon an employee's voluntary or involuntary termination of employment with the City, other than retirement as set forth above in this paragraph, the employee shall not receive any additional compensation for unused days of sick leave.

(b) **On-The-Job Injury Leave**. In addition to the above sick leave schedule, any regular full-time employee injured on the job in the performance of his duty and incapacitated shall be entitled to full pay for a period of sixty (60) duty days absence on account of said injuries (unless covered by any statute authorizing the job injury leave with pay); provided, however, if during such absence such employee is entitled to receive compensation under the provisions of the Illinois Worker's Compensation Act, or under the provisions of the Illinois Municipal Retirement Fund, the Police Pension Fund, or the Fire Pension Fund, or any other disability program funded in any part by the City, only that portion of such employee's regular salary shall be paid which will be, together with any other compensation, equal to the employee's regular wages. Benefits under this

policy shall only be available for injuries suffered unintentionally, and where the employee is found by the City not to have acted recklessly, or without proper regard for safety in the accident causing injury.

Section 3.9 – Military Duty Leave. Any employee who is a member of any military reserve forces and who is ordered by the appropriate authorities to attend a training program or perform other duties shall be granted a leave of absence in accordance with federal and/or state law, upon proper notification to their Department Head. Any employee who is drafted or enlists in the active service of the armed forces of the United States while employed by the City will be granted a leave of absence in accordance with law upon proper notice of the call to duty. In order to ensure the continuation of any benefits or pay to which the employee may be entitled as required by law, any employee called to active duty should obtain a notice form from the City's Human Resources Coordinator and return the completed notice form to the City prior to the employee's departure or deployment. In addition, sworn employees should comply with the requirements of the Fire and Police Commission Act to obtain an approved leave of absence. Employees on leave of absence under this provision shall return to the City to request a return to employment as soon as they are released from military service. Upon an employee's return to work from active military duty, the employee shall have ninety (90) days to use any outstanding vacation leave if the employee returns to work during the one-month period after their anniversary date or later in relation to the use of the employee's vacation leave as provided under Section 3.6.

Section 4.15 – Use of City Vehicles.

(a) City Vehicles. Because of potential liabilities and excessive costs, employee use of City vehicles for personal purposes must be strictly controlled and limited. Where employees are assigned City vehicles, the employee will not be permitted to take home the City vehicle overnight, except that Department Heads and those employees who are required to be "on call" to respond to emergencies will be permitted to do so. Except as provided in this Subsection 4.15(a), at all times, the use of City vehicles must be confined to use for City related business. Thus, except as expressly provided in this Subsection 4.15(a), City employees are not permitted to transport their children in City vehicles except in the cases of an emergency and an alternative vehicle is unavailable. Further, except as expressly provided in this Subsection 4.15(a), Department Heads and the designated employees who do take City vehicles home overnight must confine their use of City vehicles to travel to and from work.

See Section 4.16 regarding license requirements for any employee who drives a City vehicle. Furthermore, volunteers will not be permitted to drive a City vehicle, including volunteers for the Festival of Lights programs or related activities, until the validity of the volunteer's driver's license is verified and placed on file with the Chief of Police or Department Head. All users of City vehicles shall comply with the safety provisions and

procedures set forth in Subsection 4.15(b). Furthermore, a driver of a City vehicle shall not consume alcoholic beverages under any circumstance while driving a City vehicle or prior to driving a City vehicle such that the driver has alcohol in the driver's system while driving the City vehicle.

All users of City vehicles must remember that the City user is being held in the eye of the public, and thus must act as a good steward of the City vehicle and act in a professional manner at all times while driving or otherwise using the City vehicle in any manner. Should any user of a City vehicle act in an unprofessional or ill-tempered manner, the user may be subject to corrective or disciplinary action, including termination from employment, as provided in Section 6.3.

For Department Heads and the designated employees who do take City vehicles home overnight, incidental personal use of the City vehicle will be permitted when such City Official or City employee is traveling to and from work and home (which may include stopping at a grocery store, pharmacy, or post office, provided no alcoholic beverages are transported in the vehicle, or for a doctor or dentist appointment). Such incidental use is limited to travel on the way to work from home or on the way home from work and shall not include using the City vehicle during the employee's work day for incidental personal use. When an employee has an incidental personal matter scheduled for the middle of the employee's work day, the employee shall use the employee's personal vehicle for such incidental personal use Furthermore, Department Heads and the designated employees who do take City vehicles home overnight may transport their children in the City vehicle if (1) prior written permission has been granted by the City Administrator, (2) the City Official or employee completes any documentation of such transportation activity as required by the City Administrator, and (3) the child or children are being transported from home to start the workday and back home at the end of the workday (which may include incidental personal use related to the child, such as driving to a doctor or dentist appointment.

Section 6.1 – Attendance Policy. The first duty of every employee is to maintain an acceptable record of regular, on-time attendance when scheduled for duty, and to provide proper, advance notice to their employer when circumstances necessitate absence or tardiness. Each time an employee is late in reporting to work, or is absent from work, adjustments must be made which detract from the efficient conduct of City operations and inconvenience other employees and/or the public, regardless of the employee's reasons for being late or absent. While the City administration recognizes employees may occasionally need to be absent, either for illness or injury or personal business, and has therefore adopted policies which are designed to offset the financial loss an employee would otherwise experience in these situations, these policies are not intended, and cannot be permitted to have the effect of encouraging absence. Each employee must strive to maintain regular, on-time attendance when scheduled in order

to justify their continuing employment with the City. Furthermore, an employee must not (1) abuse sick leave, (2) use other paid leave in a manner that is detrimental to City or Department operations, or (3) take unpaid leave without prior approval. Unpaid leave, including an extended unpaid leave of absence, may be approved in advance under exceptional circumstances or as otherwise specifically authorized under a leave provision in this Manual, but only with approval from an employee's Department Head or other authorized Department supervisor.

To foster and encourage regular, on-time attendance, insure that absence and/or tardiness do not become a significant problem, and provide employees who develop an unacceptable record of absence or tardiness with notice and the opportunity to correct the problem before it requires their termination, Department Heads and/or supervisors within the City administration shall maintain attendance calendars on every employee to record instances of tardiness and/or absence from work when scheduled, with or without advance notice and/or legitimate reason justifying the occurrence. Whenever an employee's attendance calendar shows the employee has developed a record of unnecessary or excessive tardiness, absence without proper advance notice or legitimate basis, pattern absenteeism or excessive absence from duty, the Department Heads should prepare a written notice to the employee documenting the problem and the need to initiate corrective measures, and, if possible, meet with the employee to discuss the attendance problem, including methods by which it may be corrected, and inform the employee that further problems will lead to corrective action~~s~~, discipline, or termination of employment. If, despite this notice, the employee fails to correct the problem, Department Heads shall initiate prompt, effective corrective actions or disciplinary action to remedy the problem, including, where it is found to be necessary, terminating the employment relationship in order to employ someone who is capable of maintaining acceptable regular, on-time attendance.

Absence or tardiness without proper advance notice and/or legitimate basis, in particular, cannot be tolerated. Each department shall establish procedures by which employees may provide proper, advance notice of the fact, and the reason for, an incident of tardiness or absence. Once established, employees must follow proper procedures, and the failure to do so shall warrant imposition of prompt corrective action or termination, depending upon the circumstances. Additionally, discipline up to and including termination of employment, may be imposed if an employee (1) takes absences or tardiness without proper advance notice, (2) abuses sick leave, (3) uses other paid leave in a manner that is detrimental to City or Department operations, (4) takes unpaid leave without prior approval, or (5) otherwise violates the terms of this Section or fails to follow corrective action imposed upon the employee; see Section 6.3.

Section 2. Wherever the phrase "Human Resources Coordinator" is set forth in the City's Personnel Policy Manual, this phrase shall be deleted in its entirety and replaced with the phrase "Human Resources Director".

Section 3. In the following Sections of the City's Personnel Policy Manual, when the phrase "City Administrator" first appears in that Section, this phrase shall be deleted in its entirety and replaced with the phrase "City Administrator (or in the absence or unavailability of a City Administrator, the Mayor shall perform all duties and fulfill all responsibilities set forth in this Section of the Manual)": Section 1.9, Section 2.11, Section 3.4, Section 3.5, Section 3.16, Section 4.4a, Section 4.15, Section 4.17, Section 4.23, and Section 4.25.

Section 4. In Section 2.10 (Harassment – including Sexual Harassment – Policy) of the City's Personnel Policy Manual, the phrase "City Administrator" shall be replaced with "Mayor" as the Acting Ethics Officer (when the Ethics Officer is absent or unavailable) throughout this Section 2.10, and accordingly, the contact information for the Acting Ethics Officer shall be revised to reflect the current Mayor's contact information.

Section 5. This Ordinance is hereby ordered to be published in pamphlet form by the City Clerk and said Clerk is ordered to keep at least three (3) copies hereof available for public inspection in the future and in accordance with the Illinois Municipal Code.

Section 6. This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith except as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

Section 7. This Ordinance shall be in full force and effect from and after its passage, approval, and ten (10) day period of publication in the manner provided by law.

Section 8. The City Human Resources Director is directed to furnish notice or furnish a copy of these changes in the Personnel Policy Manual to all City employees within a reasonable time after the passage of this Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION THIS _____ DAY OF _____, 2020.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

EXAMINED AND APPROVED:

_____
Corporation Counsel